

*Permanent transfer of Government Servants
to Public Sector Undertakings:
Grant of retirement benefits —*

GOVERNMENT OF MAHARASHTRA

FINANCE DEPARTMENT

Resolution No. PEN-1080/CR-210/SER-4

Mantralaya, Bombay 400 032, dated 28th April 1981

*Read : (1) Government Resolution, Finance Department, No. PEN-1060/5888-X, dated 22nd March 1961.
(2) Government Circular, Finance Department, No. GCS-1063/9391/130-G. of I/64-X, dated 7th January 1965.
(3) Government Resolution, Finance Department, No. PEN-1067/49/67-X, dated 17th October 1967.
(4) Government Circular, Finance Department, No. PEN-1068/42/68-X, dated 4th October 1968.
(5) Government Circular, Finance Department, No. PEN-1069/3064-X, dated 22nd September 1970.
(6) Government Resolution, Finance Department, No. PEN-1070/2459/50-G of I/71/S-2, dated 9th October 1971.
(7) Government Resolution, Finance Department, No. PEN-1072/50-G. of I/72/S-2, dated 25th April 1973.
(8) Government Circular, Finance Department, No. PEN-1071/113/G. of I/71/S-2, dated 30th June 1973.*

RESOLUTION.—The need has been felt for some time past of consolidating at one place, the instructions/orders referred to at (1) to (8) above, issued from time to time and still in force on the subject mentioned above. Accordingly, in supersession of all the orders referred to above, Government is pleased to issue the revised instructions as under :

Basis of calculation of retirement benefits

1. Such of the Government servants as were deputed or transferred to a body corporate owned or controlled by Government or whose services were lent to such a body, should in the event of their permanent absorption in service under that body, with effect from a date prior to 17th October 1967 be paid an amount equal to what Government would have contributed had the officer been on contributory provident fund terms under Government, together with simple interest thereon at 2 per cent of the period of his pensionable service under Government. In such cases the interest (2 per cent) on the total balance of contribution should be calculated for the entire period of pensionable service of the Government servant rendered prior to his permanent absorption in an autonomous body. The amount is to be credited to his Contributory Provident Fund account with the autonomous body as an opening balance on the date of permanent absorption and Government's liability in respect of the officer's pensionable service under them would be treated as extinguished by this payment. This decision applies, however, only where the permanent transfer from Government service to an autonomous body is in the public interest and the transfer is to a Government or to a quasi Government Corporation or an autonomous body and not to a private institution. In all other cases, Government will not accept any liability to pay any retirement benefits for the period of service rendered by the officer before his transfer. The concession is not to be claimed as a matter of right but is sanctioned at the discretion of Government in individual cases where it is merited, and each case has to be referred to the General Administration Department and Finance Department.

2. The retirement benefits granted to a Government Servant who is permanently absorbed in a public sector undertaking have been reviewed and the following revised terms were sanctioned in respect of those absorbed on or after 17th October 1967:—

(i) A permanent Government servant on absorption in a public Sector undertaking is eligible for *pro-rata* pension and Death-cum-retirement gratuity based on the length of his qualifying service under Government till the date of absorption. The pension will be calculated on the basis of pensionable pay for three years in cases where the date of absorption is prior to 1st March 1976 and ten months in cases where the date of absorption is on or after 1st March 1976, preceding the date of absorption and the Death-cum-retirement gratuity on the basis of the pay immediately before absorption.

Payment of service gratuity in lieu of pension.—(i) In cases where a Government servant at the time of absorption has less than 10 years' service and is not entitled to pension, the question of proportionate pension will not arise; he will only be eligible to proportionate service gratuity in lieu of pension and to Death-cum-retirement gratuity based on length of service.

(ii) The amounts of pension/gratuity and the Death-cum-retirement gratuity would be concurrently worked out and will be intimated to the Government servant concerned as well as to the undertaking as and when a Government servant is absorbed.

(iii) *Exercise of option.*—Every Government servant is to exercise an option, within six months of his absorption for either of the alternatives indicated below :

(a) Receiving the monthly pension and Death-cum-retirement Gratuity already worked out, under the usual Government arrangements.

(b) Receiving the gratuity and a lump sum amount in lieu of pension worked out with reference to commutation tables obtaining on the date from which the *pro-rata* pension, gratuity etc., would be disbursable.

Where no option is exercised within the prescribed period, the officer will automatically be governed by alternative (b) above. Option once exercised shall be final. The option shall be exercised in writing and communicated by the Government Servant concerned to the Public Sector Undertaking.

(iv) Cases of resignation from a public sector undertaking will, for the purpose of these orders, be treated as resignation from Government service, entailing forfeiture of earlier service under Government and loss of the pensionary benefits under these orders.

(v) For the period of service rendered in a public sector undertaking, the absorbed officers will be entitled to all the benefits admissible to other corresponding employees of the organisation.

(vi) The total gratuity admissible in respect of the service rendered under the Government and that under the Public Sector Undertaking should not exceed the amount that would have been admissible had the Government servant continued in Government service and retired on the same pay which he drew on retirement from the public sector undertaking.

(vii) *Non-Admissibility of liberalisations of pension rules after absorption.*—Any further liberalisation of pension rules decided upon by Government after the permanent absorption of a Government servant in a public sector undertaking would not be extended to him. However, the benefit of further liberalisation in pension shall also be allowed to a Government servant after his permanent absorption if, in any case, such liberalisation is sanctioned retrospectively with effect from a date prior to the date of such absorption.

(viii) *Commutation of Pension.*—In cases where a Government Servant has opted to receive pension as at (iii) (i) above but wishes to commute a portion of the pension, such commutation will be regulated in accordance with the Government rules in force at the time of commutation of his pension.

(ix) *Public interest.*—The above decisions will apply only where the permanent transfer from Government service to a public sector undertaking is in the public interest. In all other cases, Government will not accept liability to pay any retirement benefits for the period of service rendered by the Government servant before his transfer.

Deputation on one's own volition

4. Permanent transfer of Government servants who apply in response to a press advertisement etc. for posts in Public Sector Undertakings whether incorporated or not, which are wholly or substantially owned by the State Government is not treated as in the public interest and the Government has no liability to pay any retirement benefits or to carry forward of leave for the period of service rendered under the Government.

Finance Department's prior approval

5. In all such cases of grant of *pro-rata* retirement benefits to State Government servants, the Adminis... Departments are required to consult the General Administration Department and the Finance Department before orders are issued in each individual case.

A question had also been raised whether retrospective absorption is permissible in terms of the orders referred to above. Such question would arise in cases where person is initially sent to such Public Sector Undertaking on deputation and the deputation period is sought to be curtailed retrospectively. While a person is on deputation leave/pension contributions are payable to Government by the Public Sector Undertaking or the person concerned. Retrospective absorptions may lead to claim for refund or non-payment of such contributions which cannot be withheld or refunded under the rules. In view of this it has been decided not to allow retrospective absorption of the employees on deputation to the Public Sector Undertaking.

Carry forward of leave

6. In respect of deputationists who opt for absorption in any Public Sector Undertaking such organisation should take over the liability in regard to Earned Leave that the optee has to his credit at the time of leaving Government service and in return Government shall pay to the Public Sector Undertaking a lump sum equal to leave salary for the earned leave due to the Government servant on the date of his permanent absorption in Public Sector Undertaking. While issuing the final sanction for the absorption of the optee in the Public Sector Undertaking, the Administrative Departments should also incorporate the provision with regard to payment of lump sum equal to leave salary by Government. This benefit will be available only in cases where the permanent transfer from Government service to a Public Sector Undertaking is *in Public interest*. These orders take effect from 9th October 1971 and cases already decided otherwise will not be reopened.

Family Pension

7. (i) The families of Government servants permanently absorbed in the Public Sector Undertaking with effect from 17th October 1967 and thereafter will also be eligible for family pension under Government Resolution, Finance Department, No. PEN-1464/3-64/X, dated 8th May 1964 as amended from time to time, if similar scheme for payment of Family Pension is not available in the Public Sector Undertaking.

(ii) The benefit of family pension will be admissible only to the families of those who were/are actually in receipt of pension from the State Government after their absorption in the Public Sector Undertakings. This benefit will be admissible to the families of those who got only the service gratuity i.e. who were/are absorbed before rendering 10 years qualifying service under the Government. Family pensions will, however, also be admissible to the families of those Government servants absorbed in the public sector undertakings who draw the lumpsum amount in lieu of monthly pension on their absorption on the date of its becoming due and thus do not draw any monthly pension on the date of death. Similarly, Family Pension will also be payable to the families of those whose monthly pension or lump sum amount has not become payable and is disbursable from the earliest date of voluntary retirement but the person dies before that date without receiving these benefits.

(iii) Grant of family pension will be subject to the usual contribution of two months Pay of the Government servant at the time of permanent absorption in a Public Sector Undertaking if the date of permanent absorption is prior to 30th September 1977. Those whose date of permanent absorption is 30th September 1977 or thereafter no such contribution will be deducted. Persons who have already drawn the pension and other benefits on absorption should deposit their two months contribution within six months from the date of issue of these orders. It is clarified that Family Pension 1964 in such cases is admissible only to those who had earlier opted for coming over to New Family Pension Schemes, 1964 as amended from time to time or to whom this scheme was already applicable. Those who had earlier opted for Family Pension, scheme contained in the Revised Pension Rules, 1950 will continue to be governed by that scheme and in their case no contribution of two months pay is necessary. The amount is creditable to the head "066-Contributions and Recoveries towards Pensions and Other Retirement Benefits—Other receipts".

(iv) Family Pension will be admissible from only one source, i.e. either from the State Government or the Public sector undertaking in case such organisation has a similar scheme for payment of family pension.

(v) It will be the responsibility of the Head of office to process the claim for family pension, forwarding to the audit office or issue of authority after satisfying itself that no such scheme exists in the public sector undertaking or that the undertaking has not extended its family pension scheme to the person concerned.

(vi) The above orders will apply automatically to the cases in which necessary Government sanction has already been issued. Therefore, it is not necessary to issue formal amendments to the relevant sanction letters. Suitable provision will, however be incorporated in the relevant sanctions to be issued hereafter.

Consultation with parent Department

8. In all cases where a Government servant is to be absorbed permanently by the foreign employer under his organisation it would be incumbent to consult the parent employer before issuing order absorbing the Government servant permanently in his service. The orders of permanent absorption should be issued only after the resignation of the Government servant has been accepted by the Government and with effect from the date of such acceptance.

Formal Resignation not necessary

9. A Government servant who is permanently absorbed in the Public Sector Undertaking is deemed to have retired from Government service on the date of his absorption. In view of this it has now been decided that obtaining of formal resignation is not necessary subject to the condition that the permission for permanent absorption in the Public Sector Undertaking has been granted and such absorption is declared by the Government to be in the public interest and there are actual orders of absorption and the Government servant has also given consent to such absorption. This decision shall apply in respect of Government Servants who will be absorbed in the Public Sector Undertakings hereafter.

Commutation and exemption from Income Tax

In the case of Government Servant, who has been permitted to be absorbed in a Public Sector Undertaking and if such absorption is declared by the Government to be in the public interest, be deemed to have retired from service from the date of such absorption. Each such Government servant is required under the relevant orders; applicable to him to exercise an option within six months of his absorption for either of the alternatives indicated below :—

- (a) receiving the monthly pension and Death-cum-retirement gratuity under the usual Government arrangements, or
- (b) receiving the gratuity and a lump sum amount in lieu of pension worked out with reference to the commutation tables obtaining on the date from which the commuted value becomes payable.

Where no option is exercised within the prescribed period, the Government servant is automatically governed by alternative (b) above.

11. A person opting for alternative (a) is entitled to commutation of a portion of the pension admissible to him in accordance with the provisions contained in Section VIII in Chapter XI of the B.C.S. Rs., Vol. I, read with the orders contained in G.R., F.D., No. COP. 1078/CR-295/79/SER-4, dated the 27th November 1979.

12. It has been decided that where a Government servant elects the alternative (b) referred to in para 10 above should be granted—

(i) on an application made in this behalf, a lump sum amount not exceeding the commuted value of 1/3rd of his pension as may be admissible to him in accordance with the provisions of commutation rules referred to in para 11 above;

(ii) a terminal benefits equal to twice the amount of lump sum referred to in (i) above, subject to the condition that the Government servant surrenders his right of drawing 2/3rd of his pension.

The commuted value of 1/3rd of the pension mentioned at (i) above, will be exempt from income-tax whereas the Terminal benefit component mentioned at (ii) above, will be chargeable to tax as the income of the year in which it is due. However, the recipient will be eligible for a relief in tax in respect of the said amount; such relief being calculated by spreading the amount equally over the three preceding years immediately preceding the year in which the payment is received and subjecting it to tax at the average of the average rates applicable to the total income of those years after adding thereto one-third of the amount. The relief in such cases is to be granted by the Central Board of Direct Taxes and an application for such relief under Section 89(i) of the Income Tax Act should be made to the Board through the Income Tax Officer concerned.

The provision of this paragraph shall be applicable to Government servants who are absorbed in the Public Sector Undertakings on or after the date of this Resolution.

13. In the case of Government servants who opt for or are automatically governed by the alternative (b) in para 10 above, the payment of monthly pension will commence from the due date, pending their medical examination in accordance with the provisions of the Commutation Rules. The Commutation shall become absolute and the title to receive the commuted value shall accrue on the date on which the Medical Board (Authority) signs the medical certificate. The reduction in the amount of pension on account of commutation would become operative from the date of receipt of commuted value of the pension by the pensioner or three months after the issue of the authority by the Audit Officer asking the pensioner to collect the commuted value of pension, whichever is earlier. If the Medical Board (Authority) directs that the age of the employee for the purpose of commutation shall be assumed to be greater than his actual age, the person concerned will have the opportunity to change his option for receiving a lump sum in lieu of monthly pension to receiving the monthly pension by written notice despatched within two weeks from the date on which he received intimation of the finding of the Medical Board (Authority). If the applicant does not change his option within the period of two weeks prescribed above, he shall be assumed to have accepted the findings of the Medical Board (Authority). The provision of this paragraph shall be applicable to Government Servants who are absorbed in the Public Sector Undertakings on or after the date of this Resolution.

Date of payment of pro-rata retirement benefits

14. A Government servant who is permitted to be absorbed in the public interest in a Public Sector Undertaking is deemed to have retired from Government service from the date of his absorption in Public Sector Undertaking and his retirement benefits are determined with reference to the length of qualifying service rendered under Government till the date of his absorption. In the case of absorption in a public Sector Undertaking from 17th October 1967 onwards, retirement benefits become payable either from the earlier date from which Government servant could have retired voluntarily under the rules applicable to him or from the date of absorption in the Public Sector undertaking/corporation, whichever is later.

Procedure for drawal of pro-rata retirement benefits

15. Clarifications have been sought as to the procedure which should be followed for sanctioning and authorising the payment of retirement benefits to those absorbed in Public Sector Undertakings. Since the Government servants are deemed to have retired from Government service on the date of absorption, the procedure laid down in Government Circular, Finance Department, No. PEN-1071/113/G. of I/71/S-2, dated the 30th June 1973 will apply. The disbursement of the retirement benefits should be authorised from the date indicated in Government's letter allowing the Government servant to be absorbed in Public Sector Undertaking.

16. In respect of employee who held non-gazetted posts before absorption, Form 15 of Bombay Civil Services Rule, Vol. II, should be filled in by the Head of Office and forwarded to the Audit Officer for determining final amount of pension and death-cum-retirement gratuity. Where the retirement benefits are payable from the date of absorption, the Head Office should obtain the particulars required in Form 15-A revised under G.R., F. D., No. PEN-1079/CR/1727/A/SER.-4, dated 28th March 1980 of B. C. S. Rules, Vol. II and forward the same to the Audit Officer alongwith the pension papers. The Audit Officer after applying the necessary audit checks, will inform the absorbed employee, Public Sector Undertaking and the Head of Office of the amount of pension and Death-cum-retirement gratuity and the date from which they are payable to him. Where the retirement benefits become payable from a date subsequent to the date of absorption, the particulars in Form 15-A should be furnished to the Audit Officer by the absorbed employee through his employer six months before the date on which the payment of the retirement benefits is to commence to enable him to issue Pension Payment Order/Gratuity Payment Order.

17. In respect of employees who held gazetted posts before absorption, action to fill in Form 15 of Bombay Civil Services Rules, Vol. II, should be initiated by the Audit Officer. The Audit Officer after determining the amount of pension and Death-cum-retirement gratuity will inform the absorbed employee, public sector undertaking, and Head of Office/Department of the amount of retirement benefits and the date from which they are payable to him. Where the retirement benefits are payable from the date of absorption, the Audit Officer will also obtain the particulars in Form 15-A of Bombay Civil Services Rules, Vol. II through the employer of the absorbed employee before authorising payment of retirement benefits. In other cases the particulars in Form 15-A should be furnished to the Audit Officer by the absorbed employee through his employer six months before the date on which the payment of the retirement benefit is to commence. As soon as Government orders regarding absorption of a Government servant are issued the Head of Office will forward Annexure II(a) and II(b) of Form 15-A (in duplicate) to the Audit Officer and such other information as the Audit Officer may require.

18. The procedure laid down in sanctioning the pensionary benefits as contained in Chapter XI of Bombay Civil Services Rules, Vol. I may be adopted keeping in view the provisions stated in these orders. The provisions regarding authorising payment of provisional pension for a period of six months and the Death-cum-retirement gratuity by the Head of Office need not be observed in the case of an employee who before his absorption had held a non-gazetted post. Payment of the retirement benefits will be received by the employee concerned from the treasury of his own choice.

19. Government is further pleased to direct that the decisions mentioned in the above paragraphs shall also apply to a State Government Servant who is on deputation to an Autonomous Body or a Local Authority and who is subsequently absorbed permanently in such organisation in the public interest. In all other cases, Government will not accept liability to pay any retirement benefits for the period of service rendered by the Government servant before his transfer. This decision shall apply to a State Government servant who is permanently absorbed in the Autonomous body/Local Authority on or after the date of this Resolution.

By order and in the name of the Governor of Maharashtra,

V. PRABHAKAR,
Special Secretary to Government,
Finance Department.

G. R., F. D., No. PEN-1080/CR-210/SER-4, dated 28th April 1981.

To

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No. of 1981.

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